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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 98-157

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. Section PSC 187.01 provides that the rule applies to a sewerage project for which the developer “is paying or has paid.” This provision is the same as the language in the statute. However, the first sentence of the statute establishes a procedure for a municipality to recoup “some or all” of the costs for an extension. The rule should clarify whether the second sentence of the statute applies only if the developer is paying or has paid the entire cost of the extension, or whether the statute applies if the developer is paying or has paid part or all of the cost of the extension.

b. The definition of “sewerage project” in s. PSC 187.02 and the first sentence of s. PSC 187.03 refer to commercial development. However, the second sentence of s. 66.076 (1) (b), Stats., refers only to a sewerage project serving a subdivision. Does the rule extend the requirement to make payments to a developer of a commercial property, and is that supported by statutory authority? In relation to this comment, note that the definition of “developer” in s. PSC 187.02 applies only to a person who constructs or creates a subdivision, not a commercial development. Another way to state the problem is that a subdivision may include a commercial development, but not all commercial developments are subdivisions under s. 66.076 (1) (b), Stats.

c. The third sentence of s. PSC 187.03 provides that the requirement to make payments to a developer does not apply to a combined water and sewer utility under s. 66.077, Stats. This exception is not provided in the statute, and the statute does not give the PSC specific authority to make this exception. What is the authority for this provision?

d. The last sentence of s. 66.076 (1) (b), Stats., requires that the method for payment “be based on the benefits accruing to the property that connects an extension into the sewerage project.” On its face, the formula in s. PSC 187.05 (3) (a) relates entirely to the proportion between the length and diameter of the sewer lateral or sewer main extension to the length and diameter of the developer’s original sewer extension. The formula does not expressly relate, as required by the statute, to the *benefits* of the subsequent extension.

2. Form, Style and Placement in Administrative Code

- a. The introductory paragraph to s. PSC 187.02 should be replaced by “In this chapter:”.
- b. The definitions in s. PSC 187.02 should be preceded by subsection numbers, begin with capital letters and conclude with periods.
- c. In general, definitions of “person” are unnecessary in rules, unless there is a reason to modify the definition in s. 990.01 (26), Stats. See s. 227.27 (1), Stats.
- d. In s. PSC 189.03, the phrase “This rule” should be replaced by the phrase “This chapter.”
- e. The last paragraph of s. PSC 187.05 (3) (a) should be a separate lettered paragraph.
- f. The title to s. PSC 187.05 (3) (b) does not relate to the contents of that paragraph.

4. Adequacy of References to Related Statutes, Rules and Forms

- a. As a general matter, vague references to other requirements are inappropriate. The reference to the “assessment statutes” in s. PSC 187.05 (1) should be replaced, if possible, by a specific reference to those statutes.
- b. The cross-referenced definition of “subdivision” should provide that the term “has the meaning given under s. 236.02 (12), Stats.” To assist the reader, a note with the statutory text may be desirable.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. The phrase “business park, mall, plant,” in the definition of “commercial development” in s. PSC 187.02 is unnecessary. The phrase “building or other facility or location” is sufficient to encompass all of those types of facilities.
- b. The term “plant” is used in the definition of “developer contribution” in s. PSC 187.02. The meaning of this term, and how it is contributed by the developer, is not obvious. Should it be defined?
- c. The definition of “sewer service lateral” in s. PSC 187.02 refers to a “customer’s” building. It is not clear who, in this provision, is a customer. Does this refer to the developer or

to the person who later connects a lateral or main sewer into the sewer main for which the developer paid?

d. The first sentence of s. PSC 187.03 refers to a connection into a “sewer main” for which there is a developer contribution. However, the statute refers to a “sewer project” for which there is a developer contribution. Is there any reason for this difference?

e. The last sentence of s. PSC 187.03 states that the rule does not limit sewerage service charges or other means of collecting costs. It is not clear why this provision is necessary, because nothing in the rule appears in any way to limit service charges or cost collection. The rule applies entirely to the relationship between the developer and a person who subsequently connects to the sewer main for which there has been a developer contribution.

f. The last sentence of s. PSC 187.03 uses the phrase “governing bodies.” Is there any reason for using this term, when “municipality” is used in s. 66.076, Stats.?

g. The term “municipality” is used in ss. PSC 187.04 and 187.05 but is not defined in the rule. Should this term be defined? It has a specific statutory definition in s. 66.076 (1m), Stats.

h. Section PSC 187.04 provides that the “municipality in which a sewerage project is located” must inform the person who wishes to connect into a sewer main of the requirements of the rule. Should the municipality in which the sewerage project is located be required to provide this notice when the sewerage project is under the jurisdiction of another entity, such as a metropolitan sewerage district?

i. Section PSC 187.04 requires the notice to be given to a person “who wishes to connect into a sewer main.” This could apparently apply to any sewer main, and should perhaps be limited to only a sewer main *in the sewerage project*.

j. The term “customer” is used in s. PSC 187.05 (1), but it is not clear what this term means.

k. Section PSC 187.05 (3) (intro.) provides a limit that is within three years “of” the date of completion. This reference is ambiguous because it could apply either before or after the date of completion. “After” should be substituted, if that is the intent.

l. In the formula, several matters of clarity should be noted:

- (1) As noted in the comments on statutory authority, the rule should clearly specify whether the formula applies to sewerage projects which are only partly paid for by the developer. If this is the case, the rule should clarify that the “cost of the original sewerage project paid” is the *portion* of the project cost paid by the developer.
- (2) The cost calculation refers to the cost “paid by” the developer. However, the rule applies to payments that the developer has made or will make in the future. This calculation should clearly state whether it relates to the entire

cost of the original sewerage project for which the developer is committed to make a payment, or whether it applies only to the payments made by the developer.

- (3) The rule appears to be based on an assumption that the developer pays for a single sewerage project. Is the formula sufficiently flexible to address situations in which a subdivision, and a sewerage project, may be completed in stages?

m. The last paragraph of s. PSC 187.05 (3) (a) refers to a “redistribution” of the cost of the original project. It is unclear what is meant by this provision. Does this mean that the calculations previously made under the formula are recalculated, with new reimbursement payments determined for all parties, when additional connections are made to the sewer main paid for by the developer? Is the three-year limit applicable to this redistribution?

n. Section PSC 187.05 (3) (b) is impossible to understand. What is “sewer infrastructure,” the cost of which is excluded? What property is used to determine the ratio of front footage? What is the point of commencement for measuring the overall length of the extension up to the development? How does this payment relate to the three-year limit? Is this payment in addition to the amount provided by formula in the previous paragraph?

o. Several other questions relate to how this rule might apply in situations that are not expressly addressed under the rule:

- (1) The rule does not provide for direct oversight or management of the reimbursement process by the municipality or the PSC. Is this process entirely a matter of negotiation between the original developer and the person making the subsequent connection, or will there be a process for the PSC or the municipality to act as an intermediary?
- (2) Is it clear how disputes regarding reimbursements will be resolved?
- (3) As drafted, it appears that individual property owners, including individual home owners, who subsequently connect to a sewer main paid for by a developer will be required to make reimbursement payments to the developer. Will the procedures in the rule and the formula be adequate if a substantial number of individual property owners are required to make reimbursements to a developer?
- (4) If the rule is clarified so that reimbursement applies to a developer who pays part of the cost of a sewer main extension, how will the rule apply to a developer who expands a subdivision and subsequently is required to pay an additional amount of the cost of the sewer main extension?